STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 22, 2007
v	No. 267265 Jackson Circuit Court
HENRY VERNELL LOTT, Defendant-Appellant.	LC No. 05-0000942-FC

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree child abuse, MCL 750.136b(3)(c), and was sentenced to five years' probation with thirty days in jail. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arose from an incident with his 16-year-old daughter in which he twice wrapped his daughter's head and body in cellophane. Defendant asserted he was attempting to alleviate his daughter's fever, but his daughter testified she was not ill on that day. She further testified that the cellophane wrap made it difficult for her to breathe, and that defendant obstructed her breathing with his hands and with a pillow. At one point, she fell asleep or passed out. When she awoke, defendant released her from the cellophane.

Defendant first argues that his actions were not "cruel" within any reasonable meaning of the term.[1] We disagree.

[1] Defendant devotes a considerable portion of his brief to the federal interpretation of the word "cruel" in the context of the cruel and unusual punishment provision of the Eighth Amendment to the U.S. Constitution. Defendant argues that if execution for certain capital crimes is not cruel, then wrapping a child in cellophane is not cruel. This argument is not addressed because Eighth Amendment jurisprudence should not apply to the Michigan definition of criminal child abuse. See *People v Stone*, 463 Mich 558, 564; 621 NW2d 702 (2001) (Fourth Amendment jurisprudence should not apply to Michigan definition of criminal eavesdropping). In any event, it is ludicrous for defendant to attempt to define "cruel" for purposes of a statute meant to protect vulnerable children from abuse in the same manner as "cruel" for determining the limits on, or the methods of, executing a convicted murderer.

We review statutory interpretation issues de novo. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (1998). When statutory language is clear, we defer to the Legislature's formulation of criminal offenses. *People v Lively*, 470 Mich 248, 256; 680 NW2d 878 (2004). Here, the statutory language is clear. The relevant portion of the statute reads: "A person is guilty of child abuse in the second degree if … the person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results." MCL 750.136b(3)(c). The Legislature defined the term "cruel" in a 1999 amendment to the child abuse statute: "'Cruel' means brutal, inhuman, sadistic, or that which torments." MCL 750.136b(1)(b), as amended by 1999 PA 273. The Legislature's definition plainly expressed the meaning of the term "cruel." No further interpretation is necessary.

Defendant next argues the evidence was insufficient to convict him. We disagree.

We review defendant's sufficiency claim de novo, examining the record to determine whether a reasonable juror could have found that the prosecutor proved the elements of the charged crime. *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). If there are conflicts in the evidence, we resolve the conflicts in favor of the prosecution. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000).

Here, defendant contends the evidence was insufficient on the element of intent. In support of his contention, he references the following facts from the record: (1) defendant made no statement that would indicate criminal intent; (2) defendant did not use a weapon; (3) defendant did not physically injure Amanda; (4) defendant released Amanda when she requested to be released; and (5) breaking a fever through the use of cellophane is a recognized home remedy.[2] None of these facts directly relate to the sufficiency of the evidence.

Intent to harm is not an element of second-degree child abuse. Rather, according to the child abuse statute, the prosecutor needed to prove only that the defendant knowingly or intentionally committed an act (here, defendant's act of binding his daughter in cellophane and causing her to struggle to breath) that is brutal, inhuman, sadistic, or that tormented the victim. See MCL 750.136b(3)(c); see also *People v Maynor*, 256 Mich App 238, 242; 662 NW2d 468 (2003) (noting that second-degree child abuse is a general intent crime), aff'd on other grounds 470 Mich 289; 683 NW2d 565 (2004). Defendant did not contest this fact at trial. Rather, he acknowledged to the police investigator that he bound his daughter in cellophane. Accordingly, the jury correctly determined that defendant intended to commit the act at issue.

[2] In support of this latter argument, defendant has appended a document entitled "Uses of Saran Wrap" to his appellate brief. The document was not submitted as evidence at trial. Therefore, it is an attempt by defendant to improperly expand the record on appeal and, as such, should be ignored by this Court. MCR 7.210(A)(1); *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Moreover, the appendix seems to be comprised of several anecdotal accounts of using saran wrap for certain medical ailments found on various websites. Defendant makes no attempt to establish a foundation for admitting such accounts into evidence or to establish the veracity of the accounts or the expertise of the writers.

Once the jury found that defendant had committed the act at issue, the jury had to determine whether the act was cruel. After hearing the evidence that defendant bound his 16-year-old daughter in cellophane, held a pillow to her face, and allowed her to lose consciousness, the jury properly determined that defendant's actions were cruel. Defendant contends that his purpose was to alleviate his daughter's fever and that, as such, his actions could not be deemed cruel. Even if the jury accepted defendant's contention that he was trying to alleviate a fever, the jury could reasonably have found defendant guilty. A defendant's subjective belief that cruel treatment is beneficial to a child does not allow a defendant to avoid conviction of second-degree child abuse. Just as the statute authorizes conviction of a parent who subjectively believes that cruel treatment is reasonable discipline, the statute authorizes conviction of a parent who subjectively believes that cruel treatment is a reasonable home remedy. See 750.136b(7); *People v Sherman-Huffman,* 466 Mich 39, 42-43; 642 NW2d 339 (2002) (affirming conviction of third-degree child abuse over defense of reasonable discipline). The evidence supports the jury's conclusion that defendant's conduct was cruel within the meaning of MCL 750.136b(1)(b).

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff